

Montana Consumer Loan Act

32-5-101. Short title. This chapter may be cited as the "Montana Consumer Loan Act".

History: En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a;

(ii) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

(iii) title loans provided for in Title 31, chapter 1, part 8.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202; amd. Sec. 1, Ch. 216, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 424, L. 1981; amd. Sec. 1, Ch. 140, L. 1983; amd. Sec. 1, Ch. 374, L. 1997; amd. Sec. 100, Ch. 483, L. 2001; amd. Sec. 7, Ch. 178, L. 2003; amd. Sec. 6, Ch. 221, L. 2003.

32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a lender exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under [31-1-112](#) as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in [31-1-111](#), other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in [31-1-703](#), who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in [31-1-803](#), who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter.

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204; amd. Sec. 2, Ch. 216, L. 1979; amd. Sec. 2, Ch. 424, L. 1981; amd. Sec. 1, Ch. 103, L. 1983; amd. Sec. 2, Ch. 140, L. 1983; amd. Sec. 1, Ch. 168, L. 1985; amd. Sec. 2, Ch. 406, L. 1985; amd. Sec. 1, Ch. 18, L. 1993; amd. Sec. 2, Ch. 374, L. 1997; amd. Sec. 1, Ch. 270, L. 1999; amd. Sec. 16, Ch. 404, L. 1999; amd. Sec. 21, Ch. 455, L. 2001; amd. Sec. 2, Ch. 125, L. 2005.

32-5-104. Adjustment of dollar amounts. (1) From time to time the dollar amounts in this chapter designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100, compiled by the bureau of labor statistics, department of labor, and hereafter referred to as the index. The index for December 1980 shall be the reference base index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10% or more, but:

(a) the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts appearing in this chapter on October 1, 1981;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) the dollar amounts may not be reduced below the amounts appearing in this chapter on October 1, 1981.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States bureau of labor statistics. If the index is superseded, the index referred to in this section shall be the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall adopt a rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a

revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

History: En. Sec. 9, Ch. 424, L. 1981.

32-5-201. License application and fees -- supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit \$50 as an investigation fee and \$125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is \$62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than \$1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of \$1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of \$75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section [32-5-204](#) shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of [32-5-301](#) relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid by the department into the state special revenue fund for the use of the department in its supervision function.

(4) The amount of \$1,000 in subsection (2) is subject to change pursuant to the provisions of [32-5-104](#).

History: Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206; amd. Sec. 3, Ch. 216, L. 1979; amd. Sec. 3, Ch. 424, L. 1981; amd. Sec. 3, Ch. 140, L. 1983; amd. Sec. 6, Ch. 600, L. 1985.

32-5-202. Issuance or denial of license. (1) Within 30 days after an application for license is filed with the department together with the required fees, the department shall issue the license, if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this chapter, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207.

32-5-203. Conduct of other business in same office. A licensee may conduct the business of making consumer loans under this chapter within any office, room, or place of business in which any other business for which a license under this chapter is not required is solicited or engaged in or in association or conjunction with the business. "Other business" may include making loans not primarily for personal, family, or household purposes, unless the department finds, after a hearing, that the other business is of a nature that the conduct tends to conceal evasion of this chapter or of the rules made under this chapter. If the department finds concealment or evasion, it shall order the licensee in writing to desist from the conduct.

History: En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208; amd. Sec. 3, Ch. 374, L. 1997.

32-5-204. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of \$125 for each license held as a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209.

32-5-205. Surrender of license. Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

History: En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

32-5-206. Termination of license not to affect preexisting contract. No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

History: En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

32-5-207. Revocation and suspension of license. The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223.

32-5-208. Reinstatement. The department may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the department in refusing originally to issue such license. In any case where the license has been revoked for cause, no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

History: En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224.

32-5-301. Charges, refunds, penalties, filing fees. (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under [31-1-112](#).

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same

manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be the greater of 5% of the amount past due or \$15, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the charges authorized by this chapter.

(7) Subsections (2) and (3) apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

- (9) A prepayment charge may not be collected if:
- (a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;
 - (b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or
 - (c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy.

History: Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210; amd. Sec. 6, Ch. 216, L. 1979; amd. Sec. 4, Ch. 424, L. 1981; amd. Sec. 2, Ch. 135, L. 1983; amd. Sec. 4, Ch. 140, L. 1983; amd. Sec. 2, Ch. 168, L. 1985; amd. Sec. 3, Ch. 406, L. 1985; amd. Sec. 3, Ch. 198, L. 1993; amd. Sec. 2, Ch. 270, L. 1999; amd. Sec. 1, Ch. 308, L. 2003; amd. Sec. 3, Ch. 125, L. 2005.

32-5-302. Installment payment -- contract period. (1) A licensee may not enter into any contract of loan:

(a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;

(b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than \$1,000 to and including \$2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2) Each loan contract requires payment of principal and charges in installments that are payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. With respect to a loan on which charges are made on an add-on basis, an installment contracted for may not be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211; amd. Sec. 5, Ch. 424, L. 1981; amd. Sec. 1, Ch. 150, L. 1991; amd. Sec. 4, Ch. 198, L. 1993; amd. Sec. 4, Ch. 374, L. 1997.

32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, the disclosures required by the Federal Consumer Credit Protection Act, a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

- (4) the principal amount of the loan excluding charges;
- (5) the rate or amount of charges as the contract may provide;
- (6) the amount collected or paid out for each kind of insurance, if any;
- (7) the amount collected or paid out for filing and other fees as allowed in [32-5-301\(5\)](#);
- (8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);
- (9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of [32-5-301\(3\)](#) if such loan is prepaid in full.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 6, Ch. 424, L. 1981; amd. Sec. 4, Ch. 406, L. 1985.

32-5-304. Receipts -- return of note. Every licensee shall:

- (1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time such payment is made;
- (2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any such system containing information equivalent to that required on a loan ledger or card.
- (3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 1, Ch. 84, L. 1981.

32-5-305. Confessions of judgment -- incomplete instruments forbidden. No licensee shall:

- (1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding;
- (2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges and in which blanks are left to be filled in after execution. However, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; or
- (3) take any instrument in which blanks are left to be filled in after the loan is made.

History: En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213.

32-5-306. Insurance -- real property security -- definitions. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee in connection with any loan.

(2) Insurance permitted under the provisions of this section must be obtained through an insurance company authorized to conduct business in Montana by a licensed insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan. However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be additional charges or a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of \$300 in subsections (3) and (4) is subject to change pursuant to [32-5-104](#) on adjustment of dollar amounts.

(8) As used in this section:

(a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;

(b) "improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and

(c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214; amd. Sec. 4, Ch. 216, L. 1979; amd. Sec. 7, Ch. 424, L. 1981; amd. Sec. 5, Ch. 140, L. 1983; amd. Sec. 1, Ch. 193, L. 1989; amd. Sec. 1, Ch. 97, L. 2005.

32-5-307. Records to be kept. Each licensee shall keep or make available in each licensed office the books, accounts, and records that the department requires and that are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated under this chapter. The licensee shall preserve the records for at least 2 years after making the final entry on any loan recorded in the records.

History: En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217; amd. Sec. 5, Ch. 374, L. 1997.

32-5-308. Annual report. (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

(2) The report must provide information with respect to the financial condition of the licensee and must include:

- (a) the name and address of the licensee;
- (b) a statement of income and expenses;
- (c) an analysis of charges, size of loans made, and types of security on loans;
- (d) an analysis of suits and foreclosures; and
- (e) other relevant information the department may reasonably require concerning the business conducted during the preceding calendar year for each licensed place of business of the licensee in this state.

(3) The report must be made under oath and be in a form prescribed by the department. The department shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218; amd. Sec. 1, Ch. 64, L. 2005.

32-5-309. Advertising -- limitations. No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

History: En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

32-5-310. Wage assignments -- limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by

and be subject to the provisions of this chapter.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

- (a) a correct copy of the assignment;
- (b) a statement of the amount of such loan and the amount due and unpaid thereon;
- (c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220.

32-5-311 through 32-5-320 reserved.

32-5-321. Deferral charge permitted -- nature of deferral charge. Notwithstanding the provisions of [32-5-301](#) and [32-5-302](#), if the contract so provides, a consumer loan licensee may, at any time, grant a deferral and make deferral charges as provided in [32-5-322](#). A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the deferral period. The deferral period is that period during which no installment is scheduled to be paid by reason of the deferral.

History: En. Sec. 1, Ch. 341, L. 1979.

32-5-322. Deferral charge -- rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under [32-5-301](#)(3) as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to [32-5-301](#)(3).

History: En. Sec. 2, Ch. 341, L. 1979; amd. Sec. 3, Ch. 168, L. 1985; amd. Sec. 5, Ch. 406, L. 1985.

32-5-323. Deferral prohibited when default charge has been collected. No installment payment upon which a default charge has been collected may be deferred unless the default charge is refunded to the borrower or credited to the deferral charge.

History: En. Sec. 3, Ch. 341, L. 1979.

32-5-324. Collection of deferral charge. A deferral charge may be collected at the time it accrues or any time thereafter.

History: En. Sec. 4, Ch. 341, L. 1979.

32-5-401. Department -- powers and duties -- adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter. (2) All rules adopted under this chapter are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203.

32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

- (1) a licensee; or
- (2) a person whom the department has reason to believe is violating or is about to violate this chapter.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215; amd. Sec. 5, Ch. 216, L. 1979; amd. Sec. 8, Ch. 424, L. 1981; amd. Sec. 6, Ch. 140, L. 1983.

32-5-403. Annual examinations -- cost. (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at a rate to be established by the department by rule. Such fees shall be established to recover all of the costs of the supervision program of the department. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216; amd. Sec. 1, Ch. 368, L. 1983; amd. Sec. 7, Ch. 600, L. 1985.

32-5-404. Access to records -- witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

32-5-405. Injunctions -- receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

History: En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227.

32-5-406. Penalties. (1) Any person who shall contract for or receive interest or charges on any bond, bill, promissory note, or other instrument of writing at a rate exceeding the maximum amount authorized by this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any person who, by any device, subterfuge, or pretense whatsoever, shall engage in any transaction permitted only to licensees under the provisions of the chapter without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.

32-5-407. Attorney fees -- bad check charge. (1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

History: En. Sec. 10, Ch. 424, L. 1981; amd. Sec. 4, Ch. 168, L. 1985; amd. Sec. 3, Ch. 270, L. 1999.

32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges, as allowed under [31-1-112](#), on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by [32-5-504](#) and by [32-5-301](#)(5).

History: En. Sec. 1, Ch. 218, L. 1981; amd. Sec. 7, Ch. 140, L. 1983; amd. Sec. 5, Ch. 168, L. 1985; amd. Sec. 6, Ch. 406, L. 1985.

32-5-502. Computation of charges. (1) Charges authorized by this part shall be computed in each billing cycle by any of the following methods:

(a) by converting the monthly rate to a daily rate and multiplying such daily rate by the daily unpaid principal balance of the account; or

(b) by multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) by multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle.

(2) For purposes of this part, "billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from such date.

(3) For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

History: En. Sec. 2, Ch. 218, L. 1981.

32-5-503. Early payment. The borrower may at any time pay all or any part of the unpaid balance in the borrower's account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. With respect to a loan on which charges are made on an add-on basis, minimum monthly payments must be made in an amount that would result in the full

repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in [32-5-302](#)(1).

History: En. Sec. 3, Ch. 218, L. 1981; amd. Sec. 6, Ch. 374, L. 1997.

32-5-504. Additional charges. In addition to the charges permitted under [32-5-501](#), a holder of a supplementary license may contract for and receive the fees, costs, and expenses permitted by this chapter on other loans, subject to all the conditions and restrictions set forth in the applicable provisions of this chapter with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay, in the case of credit life insurance, the total balance of the loan due on the date of the borrower's death or, in the case of credit disability insurance, all minimum payments that become due on the loan during the covered period of disability. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the commissioner of insurance, to the unpaid balances in the borrower's account, using either of the methods specified in [32-5-502](#) for the calculation of loan charges.

(2) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

History: En. Sec. 4, Ch. 218, L. 1981.

32-5-505. Security. A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain the security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain the security interest until the open-end account is terminated. However, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within 30 days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan.

History: En. Sec. 5, Ch. 218, L. 1981; amd. Sec. 7, Ch. 374, L. 1997.

32-5-506. Provisions not applicable. The provisions of [32-5-301](#)(3) and the provisions of [32-5-304](#) do not apply to open-end loans.

History: En. Sec. 6, Ch. 218, L. 1981; amd. Sec. 6, Ch. 168, L. 1985; amd. Sec. 7, Ch. 406, L. 1985; amd. Sec. 4, Ch. 270, L. 1999.